

REMARKS

Reconsideration of this application as amended is respectfully requested.

In the Office Action, claims 1-76 are pending and rejected.

In this response, no claim has been cancelled. Claims 1, 24, 25, 42, 54 and 69 have been amended. No new matter has been added. Thus, claims 1-76 remain pending.

Specification

Specification is objected to as containing ineffective incorporating of subject matter into this application by reference. In this response, paragraph [0001] is amended as listed above. Applicants respectfully request for the withdrawal of such objection to the specification.

Claim objections

Claims 42 and 69 are objected to because of informality. In this response, claim 42 is amended to depend on claim 41, and claim 69 is amended to depend on claim 68. Applicants respectfully request for the withdrawal of the above objections.

Double patenting

Claims 54-67 are rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 56-85 of Application No. 10/709,391 (hereinafter '391) in view of Son et al. (US 2003/0126277, hereinafter "*Son*"). Applicants respectfully submit that if obviousness-type double patenting rejection is based on another application, a provisional obviousness-type double patenting rejection should be made. Therefore, Applicants need not respond to the above double patenting rejection unless the application issues as a patent.

However, Applicants respectfully submit that claim 54 does not have substantially the same elements as claim 56 of '391. Further, *Son* do not teach or suggest the amended elements of

independent claim 54 and its dependent claims thereof, as further explained below. Therefore, Applicants respectfully request for the withdrawal of the above rejections.

Applicants respectfully request that, should the Examiner maintain the rejection, that the Examiner indicate the above double patenting rejection is a provisional double patenting rejection.

35 U.S.C. §101 Rejection

Claim 24 is rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Claim 24 has been amended to claim a computer-readable storage medium. Applicants respectfully request for the withdrawal of the above rejection.

35 U.S.C. §103 Rejections

Claims 1-2, 5-6, 8, 11, 13-14, 17, 19-25, 28, 31, 33-34, 37, 39, 40, 43-44, and 53 are rejected under 35 U.S.C. §103(a) as being unpatentable over Kleinpeter III et al. (US Patent No. 6,907,463, hereinafter "*Kleinpeter*") in view of Chiu (US Pub. No. US2003/0158958, hereinafter "*Chiu*").

Claims 3, 7, 9, 15-16, 26, 29, 35-36, and 45-50 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu* in view of Schleicher et al. (US Pub. No. US2002/0138576, hereinafter "*Schleicher*").

Claims 51 and 52 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu-Schleicher* in view of Perkes et al. (US Pub. No. US 2002/0194601, hereinafter "*Perkes*").

Claims 4, 10, 18, 27, 30, 38 and 41-42 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu* in view of Son et al. (US Pub. No. US 2003/0126277, hereinafter "*Son*").

Claims 12 and 32 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Chiu* in view of *Perkes*.

Claims 54-57, 59-65, and 67-72 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter* in view of *Schleicher* and in further view of *Son*.

Claims 73-76 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Schleicher-Son* in view of *Chiu*.

Claims 58 and 66 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Kleinpeter-Schleicher-Son* in view of *Perkes*.

Applicants do not admit that the above references are prior art and reserves the right to challenge these references at a later date.

The References cited in the Office Action

Kleinpeter teaches a method to exchange files between users in a network environment. This method includes the steps of executing a software agent on multiple users' computing systems. These software agents establish a connection from their respective computing systems when logging into a network environment. An agent server, executed on the network environment, directs the software agents to establish direct connection between their respective computing systems in response to file requests from various users (See Abstract). The agent server determines a computer system having the requested file, and instructs the computer system retaining the requested file on how to transfer that file to the requesting user. In an event that a file transfer is interrupted, the server can determine what point in the file the transfer has been interrupted. (*Kleinpeter* column 2, lines 41-60).

Chiu teaches an electronic content delivery system using a network of end-user devices. Each end-user device has storage capability for storing contents in a distributed fashion, and for making the contents available to other devices in a P2P fashion. (See Abstract)

Schleicher teaches a method and a system for generating revenue in a peer-to-peer file delivery network that includes a server node and client nodes. Subscription-based content may be

made available for free or for a fee. If the content is fee-based, then a fee may be charged to the users for receiving or opening the fee-based content. The fee charged may be in addition to , or in lieu of, the fee charged to the providers of the subscription-based content. (See Abstract)

Son teaches an apparatus for providing a multimedia streaming service by using a P2P approach including a number of clients that distribute and store multimedia data, and a number of servers that manage a multimedia data catalog. The client searches for multimedia data in its local disk, and calls for the data catalog to the server if there is no corresponding data in the local disk. The client then searches for the multimedia data catalog, and receives data from a client that stores the corresponding data. In case no clients store the corresponding data, the client tries to receive data from the server. (See Abstract)

Perkes teaches a system, method and program for delivering content utilizing a master agent. A peer-to-peer connection is provided via a network between at least a broadcasting agent and a viewing agent to transmit contents. In addition, *Perkes* teaches collecting, collating, organizing and analyzing information about a consumer's computer and peripheral usages, and using the information to select, download and coordinate the presentation of advertising and viewing content. (See Abstract)

References Distinguished

Applicants respectfully submit that *Kleinpeter*, *Chiu*, *Schleicher*, *Perkes* and *Son*, along or in combination, do not teach or suggest all pending claims limitations. To render a claim obvious, the cited references must teach or suggest each and every element of the claim. Independent claims 1 and 25, which are rejected based on *Kleinpeter* in view of *Chiu*, recites, in part, **"monitoring the prioritized lists of the clients during the transferring of the media items."**

According to *Kleinpeter*, its users submit a list of requested files to a central web server, and an agent server organizes the requested files and matches them with the nearest available agents with the requested files (*Kleinpeter* column 1, lines 58-64). However, *Kleinpeter* does not disclose a prioritized list of requested files. Further, as illustrated in its Figure 3B, *Kleinpeter's*

agent server receives from agents various file transferring results, such as "success", "active agent cannot communicate with the passive agent", "file does not exist", "error in getting file", or "client never got file", etc. However, these results are generated when the transferring of the requested files are completed, either successfully, or unsuccessfully. Therefore, generating these results cannot be construed as monitoring the lists of requested files during the transferring of the files. Therefore, *Kleinpeter* does not teach or suggest "a prioritized list", nor does it teach or suggest "monitoring the prioritized lists of the clients during the transferring of the media items."

Likewise, in *Chiu*, each user makes a request to a service provider for content information, and the service provider initiates a transfer from a first end-user's device to a second end-user's device. Even though *Chiu's* service provider continuously keeping track of the whereabouts of any content information and keeping track of the progress of the download (*Chiu* paragraph [0004]), it does not monitor any prioritized list of content information. Therefore, *Chiu* does not teach or suggest "a prioritized list", nor does it teach or suggest "monitoring the prioritized lists of the clients during the transferring of the media items."

Further, *Schleicher* discloses a priority level for delivery a particular content (*Schleicher* paragraph [0027]). However, the priority level is for bandwidth allocation for a particular content, therefore it is not a prioritized list of subscription-based content. Thus, *Schleicher* does not disclose a prioritized list, nor does it disclose monitoring the prioritized lists of the users during transferring of the media items. Lastly, neither *Son* nor *Perkes* teaches or suggest monitoring prioritized lists during transferring of the media items. Therefore, the paragraphs cited in the Office Action with respect to *Kleinpeter*, *Chiu*, *Schleicher*, *Perkes* or *Son*, individually or in combination thereof, do not teach or suggest all limitations of independent claims 1 and 25. In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waving any argument regarding that claim.

Since none of the cited references teach or suggest each and every element of claims 1 or 25, claims 1 and 25 are allowable over each reference, whether considered alone or in combination. Claims 2-24, which depend from claim 1, and claims 26-53, which depend from

claim 25, are allowable at least for depending from an allowable base claim, and potentially for other reasons as well.

Claim 2 recites "upon completion of transfer of a particular media item at a given client, indicating at the client that the particular media item may be purchased for use." According to paragraph [0015] of *Chiu*, its software component 141 communicates with a digital rights management service 160 to ensure proper protection of the content. If the content is authorized for distribution, the software component 141 stores the authorized content on local storage. However, *Chiu* evaluates whether the content is authorized for downloading, it does not disclose, upon completion of downloading the content, indicating whether the content may be purchased for use. Therefore, for any of these reasons, claim 2 is allowable over *Kleinpeter* in view of *Chiu*.

Claim 51 recite that "each encryption key automatically expires after some period of time." In paragraph [0217] of *Perkes*, its system allows encryption keys to be regularly updated during a secure session. However, *Perkes* does not disclose its dynamic key refreshing is to replace the encryption keys that are expired after some period of time. Therefore, *Perkes* may regularly update its keys even though these keys are not expired after some period of time. Thus, for any of these reasons, claim 51 is allowable over *Kleinpeter* in view of *Chiu* and *Perkes*.

Thus, Applicants respectfully request the withdrawal of the rejections of the above claims under 35 U.S.C. 103(a) over *Kleinpeter*, *Chiu*, *Schleicher*, *Perkes* or *Son*, individually and in combination thereof.

Further, independent claim 54, which is rejected over *Kleinpeter* in view of *Schleicher* and in further view of *Son*, recites selecting a particular media item to be delivered, "**wherein the selection grants high priority to any of the plurality of devices with no media items to watch.**" The Office Action admits that *Kleinpeter* does not disclose each priority list represents a prioritized list of media items (Page 23 of the Office Action). Likewise, *Kleinpeter* does not disclose granting high priority to any of the plurality of devices with no media items to watch.

In *Schleicher*, a high priority means that the content will be allocated adequate bandwidth to deliver the file within a particular time frame and at the exclusion of other file deliveries if

necessary (*Schleicher* paragraph [0027]). However, *Schleicher* does not disclose how its priority level is determined, nor does it teach or suggest a high priority level being granted to any users with no content to view.

The Office Action cited *Son* for teaching of selecting a particular media item to be delivered based on whether video data to be played is stored in its local disk (*Son* paragraph [0033]). The Office Action does not cite any paragraphs in *Son* that discloses granting high priority to any device with no video data to watch, nor does the Office Action provide any citation from *Chiu* or *Perkes* for such disclosure. Therefore, Applicants respectfully submit that *Kleinpeter* in view of *Schleicher*, and further in view of *Son* does not disclose all limitations of claim 54. In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicants' silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waving any argument regarding that claim.

Since none of the cited references teach or suggest each and every element of claim 54, claim 54 is allowable over each reference, whether considered alone or in combination. Claims 55-76, which depend from claim 54, are allowable at least for depending from an allowable base claim, and potentially for other reasons as well.

For example, claim 58 recites, in part, "determining a device least most recently served by delivery of a media item." According to paragraph [0058] of *Perkes*, its delivery scheduler uses the history of recent logged activity and past history stored in the user's profile to determine the optimum time for the download. However, such determination is used to optimize the usage of network bandwidth; it is not used to determine a user's device which is least most-recently served with download. Therefore, for any of these reasons, claim 58 is allowable over *Kleinpeter*, *Schleicher*, *Son*, and *Perkes*.

Thus, Applicants respectfully request the withdrawal of the rejections of the above claims under 35 U.S.C. 103(a) over *Kleinpeter*, *Chiu*, *Schleicher*, *Perkes* or *Son*, individually or in combination thereof.

Conclusion

A Notice of Allowance is therefore respectfully requested. Should the Examiner find that a telephone or in-person conference would expedite the prosecution of this Application further, he is invited to contact the Applicants' counsel at the contact listed below for such a conference.

Please charge any deficiency in fees or credit any overpayment to our Deposit Account No. 50-2207, from which the undersigned is authorized to draw.

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Respectfully submitted,

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